

RULES OF THE ARKANSAS BOARD OF DISPENSING OPTICIANS

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1
2 **1. STATEMENT OF ORGANIZATION AND OPERATIONS**

3 1.1. Pursuant to the Ophthalmic Dispensers Act originally adopted in 1981
4 and codified at Ark. Code Ann. § 17-89-101 et seq. the Arkansas
5 Board of Dispensing Opticians promulgates and adopts the following
6 rules and regulations of ophthalmic dispensing.

7 **2. INFORMATION FOR PUBLIC GUIDANCE**

8 2.1. The Board makes available a list of persons holding certain
9 responsibilities for handling FOIA request, licensing questions, and
10 complaints against licensees so that the public may obtain information
11 about the Board or make submissions or request. The names, mailing
12 addresses, telephone numbers, and electronic addresses can be
13 obtained by contacting the Board's office.

14 2.2. The Board maintains a list of official forms used by the Board and a
15 list of all formal, written statement of policy and written interpretative
16 memoranda, and orders, decisions and opinions resulting from
17 adjudications, which may be obtained from the Board's office.

18 2.3. Copies of all forms used by the Board, written statements of policy
19 and written interpretive memoranda, and all orders issued by the
20 Board, excluding materials related to written and practical testing, may
21 be obtained from the Board's office.

22 **3. GENERAL INFORMATION ORGANIZATION**

23 3.1. Description of Organization. The officers of the Board of Dispensing
24 Opticians shall be a Chairman, Vice Chairman, and Secretary-

1 Treasurer. The Board shall elect officers from its membership at its
2 first regular meeting of the year, and each officer shall serve for a term
3 of one year or until his successor is elected and duly qualified. If a
4 vacancy occurs, the Board shall elect a successor to complete the
5 balance of the unexpired term of office.

6 3.2. Meetings of the Board. Regular meetings of the Board shall be held at
7 least twice each year at a time and place determined by the Board.

8 Other meetings of the Board shall be called by the Chairman or upon
9 the written request of two Board members. The Secretary-Treasurer
10 shall give timely notice of the time and place of such meetings to each
11 member. Correspondence shall be directed to the Board's office of the
12 ~~Secretary-Treasurer~~, whose address may be obtained through the
13 Governor's office. All meetings will be conducted in conformity with
14 the Arkansas Freedom of Information Act ~~Meetings of the Board shall~~
15 ~~be conducted~~ and in accordance with Robert's Rules of Order except
16 where such rules conflict with these rules and regulations

17 3.3. Quorum. Five members of the Board shall constitute a quorum for the
18 transaction of business. All official action of the Board must be
19 approved by the majority vote of the members present and voting
20 except where a two-thirds ($\frac{2}{3}$) or three-fourths ($\frac{3}{4}$) majority vote is
21 required by Robert's Rules of Order or these rules and regulations.

22 3.4. Agenda. The Secretary-Treasurer will prepare the agenda for regular
23 and special meetings. The agenda will be distributed to Board

1 members and made available to the public in advance of the meeting.
2 The agenda should state with specificity the items that will be
3 considered at the meeting or hearing. The agenda should include the
4 following topics, as applicable; the Call to Order, Review of Minutes,
5 Old Business, New Business, Other Business, Adjudicatory Hearings,
6 Rule-making hearings and Public Comment. The order of the agenda
7 items is tended to be flexible and may be adjusted to meet the needs
8 of the Board. The agenda may be amended by appropriate motion.

9 3.5. Amendment to Rules and Regulations. ~~These rules and regulations~~
10 ~~may be amended at any regular or special meeting of the Board,~~
11 ~~provided such proposed amendments have been submitted to all~~
12 ~~members of the Board at least 10 days prior to the meeting at which~~
13 ~~the amendment is to be considered. The specified 10 day notice may~~
14 ~~be waived provided there is unanimous written consent of all Board~~
15 ~~members.~~ All requirements of the Arkansas Administrative
16 Procedures Act shall be complied with prior to the final adoption of ~~the~~
17 an amendment to these Rules and Regulations.

18
19 3.6. Fiscal Year of the Board. The fiscal year of the Board shall be from
20 July 1 to June 30.

21 3.7. Book of Licensure and Book of Registry. The Secretary-Treasurer of
22 the Board shall maintain an annually updated Book of Licensure and a
23 Book of Registry of all opticians licensed or registered to engage in

1 the business of ophthalmic dispensing in Arkansas. In addition, a
2 listing of all apprentices~~d~~ dispensing opticians together with the
3 licensed or registered dispensing opticians by whom they are
4 supervised shall be maintained.

5 3.8. Annual Report. The Secretary-Treasurer shall prepare and present
6 an annual report of administration, licensure, registry, and
7 investigation to the Arkansas State Board of Optometry and to the
8 Ophthalmology Section of the Arkansas Medical Society, as well as a
9 copy of the books of Licensure and Registry listed in Section 3.7 of
10 these rules.

11 3.9. Financial Affairs. The current rules and regulations of the Arkansas
12 Department of Finance and Administration shall be followed in the
13 financial affairs of the Board.

14 3.10. Compensation. Board members shall be compensated ~~\$50.00 per~~
15 ~~diem and actual expenses incurred in attending or discharging his~~
16 ~~duties as a Board member~~ pursuant to Ark. Code Ann. § 25-16-903.

19 **4. RULE MAKING AUTHORITY**

20 4.1. Authority. The Board has been authorized by the Legislature to
21 promulgate rules. Ark. Code Ann. § 17-89-203 (a) (6). The Board
22 follows the procedural requirement of the Arkansas Administrative
23 Procedures Act, in particular Ark. Code Ann. §25-15-203 and §25-15-

1 204. Additionally, the Board is required to abide by the provisions of
2 Ark. Code Ann. §10-3-309.

3 4.2. Initiation of Rule-Making. The process of adopting a new rule or
4 amending or repealing an existing rule (hereinafter referred to “rule-
5 making”) may be initiated by request of the Board that the staff submit
6 proposed drafts. Additionally, staff of the Board my request
7 permission of the Board to initiate rule-making. Third persons outside
8 the Board may petition for the issuance, amendment, or repeal of any
9 rule.

10 4.3. Petition to Initiate Rule-Making.

11 4.3.1. Third parties may initiate rule-making to adopt, amend, or repeal
12 a rule by filing a petition with the Board to initiate rule-making.
13 The petition must contain the name, address, and telephone
14 number of the petitioner, the specific rule or action requested, the
15 reasons for the rule or action requested, and facts showing that
16 the petitioner is regulated by the Board or has a substantial
17 interest in the rule or action requested.

18 4.3.2. The petition to initiate rule-making shall be filed with the
19 Secretary-Treasurer.

20 4.3.3. Within thirty (30) days after submission of the petition, the Board
21 will either deny the petition, stating its reason in writing, or will
22 initiate rule-making. A special meeting will be called if necessary
23 to meet this time frame.

1 4.4. Pre-filing with the Bureau of Legislative Research. Thirty (30) days
2 before the public-comment period ends, the Board will file with the
3 Bureau of Legislative Research the text of the proposed rule or
4 amendment as well as a financial impact statement and a Bureau of
5 Legislative Research questionnaire as provided by Ark. Code Ann.
6 §10-3-309.

7 4.5. Public Input.

8 4.5.1. Before finalizing language of a proposed new rule or an
9 amendment to, or repeal of, an existing rule, the Board will receive
10 public input through written comments and/or oral submissions.
11 The Board will designate in its public notice the format and timing
12 of public comment.

13 4.5.2. Any public hearing will provide affected persons and other
14 members of the public a reasonable opportunity for presentation
15 of evidence, arguments, and oral statements within reasonable
16 conditions and limitations imposed by the Board to avoid
17 duplication, irrelevant comments, unnecessary delay, or disruption
18 of the proceedings.

19 4.5.3. The Board Chairman, any member of the Board, or any person
20 designated by the Board may preside at the public hearing. The
21 Board must ensure that the Board personnel responsible for
22 preparing the proposed rule changes to be available to explain the

1 proposal and to respond to questions or comments regarding the
2 proposed rule.

3 4.5.4. The Board must preserve the comments made at the public
4 hearing by a certified court reporter or by recording instruments.

5 4.5.5. Any person may submit written statement within the specified
6 period of time. All timely, written statements will be considered by
7 the Board and be made a part of the rule-making record.

8 4.6. Notice of Rule-making. The Board will give notice of proposed rule-
9 making to be published pursuant to Ark. Code Ann. §25-15-204. The
10 notice will set any written comment period and will specify the time,
11 date, and place of any public hearing.

12 4.7. The Decision to Adopt a Rule.

13 4.7.1. The Board will not finalize language of the rule or decide
14 whether to adopt a rule until the period of public comment has
15 expired.

16 4.7.2. Before acting on a proposed rule, the Board will consider all of
17 the written submissions and/or oral submissions received in the
18 rule-making proceedings or any memorandum summarizing such
19 oral submissions, and any regulatory analysis or fiscal impact
20 statement issued in the rule-making proceedings.

21 4.7.3. The Board may use its own experience, specialized knowledge,
22 and judgment in the adoption of a rule.

1 4.8. Variance Between Adopted Rule and Published Notice of Proposed
2 Rule.

3 4.8.1. The Board may not adopt a rule that differs from the rule
4 proposed in the published notice of the intended rule-making on
5 which the rule is based unless:

6 4.8.1.1. The final rule is in character with the original scheme and
7 was a logical outgrowth of the notice and comments
8 stemming from the proposed rule, or

9 4.8.1.2. The notice fairly apprised interested persons of the
10 subject and the issues that would be considered so that those
11 persons had an opportunity to comment.

12 4.8.2. In determining whether the final rule is in character with the
13 original scheme and was a logical outgrowth of the notice and
14 comments, and that the notice of the intended rule-making
15 provided fair warning that the outcome of that rule-making
16 proceeding could be the rule in question, the Board must consider
17 the following factors:

18 4.8.2.1. The extent to which persons who will be affected by the
19 rule should have understood that the rule-making proceeding
20 on which it is based could affect their interest; and

21 4.8.2.2. The extent to which the subject matter of the rule or
22 issues determined by the rule are different from the subject

1 matter or issued contained in the notice of intended rule-
2 making; and

3 4.8.2.3. The extent to which the effects of the rule differ from the
4 effects of the proposed rule contained in the notice of
5 intended rule-making.

6 4.9. Concise Statement of Reasons

7 4.9.1. When requested by an interested person, either prior to the
8 adoption of a rule or within thirty (30) days after its adoption, the
9 Board shall issue a concise statement of the principal reasons for
10 and against its adoption of the rule. Request for such a statement
11 must be in writing and be delivered to the Secretary-Treasurer.
12 The request should indicate whether the statement is sought for
13 all or only a specified part of a rule. A request will be considered
14 to have been submitted on the date on which it is received by the
15 Secretary-Treasurer.

16 4.9.2. The concise statement of reasons must contain:

17 4.9.2.1. The Board's reasons for adopting the rule;

18 4.9.2.2. An indication of any change between the text of the
19 proposed rule and the text of the rule as finally adopted, with
20 explanations for any such change; and

21 4.9.2.3. The principal reasons urged in the rule-making procedure
22 for and against the rule, and the Board's reasons for
23 overruling the arguments made against the rule.

- 1 4.10.Contents.
- 2 4.10.1. The Board shall cause its rules to be published and made
- 3 available to interested persons. The publication must include:
- 4 4.10.1.1. The text of the rule; and
- 5 4.10.1.2. A note containing the following:
- 6 4.10.1.2.1. The date(s) the Board adopted or amended the
- 7 rule;
- 8 4.10.1.2.2. The effective date(s) of the rule;
- 9 4.10.1.2.3. Any findings required by any provisions of law as a
- 10 prerequisite to adoption for effectiveness of the rule; and
- 11 4.10.1.2.4. Citations to the entire specific statutory or other
- 12 authority authorizing the adoption of the rule;
- 13 4.10.1.3. The publication of the rule(s) must state the date of
- 14 publication.
- 15 4.11.FORMAT. The published rules of the Board will be organized
- 16 substantially in the following format:
- 17 4.11.1. Statement of Organization and Operations
- 18 4.11.2. Information for Public Guidance
- 19 4.11.3. General Organization
- 20 4.11.4. Rule-making
- 21 4.11.5. Emergency Rule-making
- 22 4.11.6. Declaratory Orders
- 23 4.11.7. Adjudicative Hearings

1 4.11.8. Licensing

2 4.11.9. Et seq. Substantive rules and other rule of the Board

3 4.12. Incorporated by Reference: By reference in a rule, the Board may
4 incorporate all or any part of a code, standard, rule, or other matter if
5 the Board finds that copying the matter in the Board's rule would be
6 unduly cumbersome, expensive, or otherwise inexpedient. The
7 reference in the Board rule must fully and precisely identify the
8 incorporated matter by title, citation, date, and edition, if any; briefly
9 indicate the precise subject and general contents of the incorporated
10 matter; and state that the rule does not include any later amendments
11 or editions of the incorporated matter. The Board may incorporate
12 such a matter by reference in a proposed or adopted rule only if the
13 Board makes copies of the incorporated matter readily available to the
14 public. The rules must state how and where copies of the
15 incorporated matter may be obtained at cost from this Board, and how
16 and where copies may be obtained from an Board of the United
17 States, this state, another state, or the organization, association, or
18 persons originally issuing that matter. The Board must retain
19 permanently a copy of any materials incorporated by reference in a
20 rule of the Board.

21 4.13. Filing

22 4.13.1. After the Board formally adopts a new rule or amends a current
23 rule or repeals and existing rule, and after the rule change has

1 been reviewed by the Legislative Counsel, the staff will file final
2 copies of the rule with the Secretary of State, the Arkansas State
3 Library, and the Bureau of Legislative Research, or as otherwise
4 provide by Ark. Code Ann. §25-15-204(d).

5 4.13.2. Proof of filing a copy of the rule, amendment, or repeal with the
6 Secretary of State, the Arkansas State Library, and the Bureau of
7 Legislative Research will be kept in a file maintained by the
8 Secretary-Treasurer.

9 **5. EMERGENCY RULE-MAKING**

10 5.1. Request for Emergency Rule-Making. The proponent of a rule may
11 request the Board to adopt an emergency rule. In addition to the text
12 of the proposed rule or amendment to an existing rule and any other
13 information required by Section 4.3 of these rules, the proponent will
14 provide a written statement setting out the facts or circumstances that
15 would support a finding of imminent peril to the public health, safety,
16 or welfare.

17 5.2. Finding of an Emergency. Upon receipt of the written statement
18 requesting an emergency rule-making and documents or other
19 evidence submitted in support of the assertion that an emergency
20 exists, the Board will make an independent judgment as to whether
21 the circumstances and facts constitute an imminent peril to the public
22 health, safety, or welfare requiring adoption of the rule upon fewer
23 than 30 days notice. If the Board determines that the circumstances

1 warrant emergency rule-making, it will make a written determination
2 that sets out the reasons for the Board's finding that an emergency
3 exists. Upon making this finding, the Board may proceed to adopt the
4 rule without any prior notice or hearing, or it may determine to provide
5 an abbreviated notice and hearing.

6 5.3. Effective Date of Emergency Rule. The emergency rule will be
7 effective immediately upon filing, or at a stated time less than ten (10)
8 days thereafter, if the Board finds that this effective date is necessary
9 because of imminent peril to the public health, safety, or welfare. The
10 Board will file with the rule its written findings justifying the
11 determination that emergency rule-making is appropriate and, if
12 applicable, the basis for the effective date of the emergency rule being
13 less than ten days after the filing of the rule pursuant to A.C.A. §25-
14 15-204(e). The Board will take appropriate measures to make
15 emergency rules known to persons who may be affected by them.

16 17 18 **6. DECLARATORY ORDERS**

19 6.1. Purpose and Use. A declaratory order is a means of resolving a
20 controversy or answering questions or doubts concerning the
21 applicability of statutory provisions, rules, or orders over which the
22 Board has authority. A petition for declaratory order may be used only
23 to resolve questions or doubts as to how the statutes, rules or orders
24 may apply to the petitioner's particular circumstances. A declaratory

1 order is not the appropriate means of determining the conduct of
2 another person or for obtaining a policy statement of general
3 applicability from a Board. A petition or declaratory order must
4 describe the potential impact of statutes, rules or orders upon the
5 petitioner's interest.

6 6.2. The Petition. The process to obtain a declaratory order is begun by
7 filing with the Board a petition that provides the following information:

8 6.2.1. The caption shall read: Petition for Declaratory Order Before
9 the Arkansas Board of Dispensing Opticians.

10 6.2.2. The name, address, telephone number and facsimile number of
11 the petitioner.

12 6.2.3. The name, address, telephone number, and facsimile number of
13 the attorney of the petitioner.

14 6.2.4. The statutory provision(s), Board rule(s), or Board order(s) on
15 which the declaratory order is sought.

16 6.2.5. A description of whom the statute, rules, or orders may
17 substantially affect the petitioner and the petitioner's particular set
18 of circumstances, and the question or issue on which petitioner
19 seeks a declaratory order.

20 6.2.6. The signature of the petitioner or petitioner's attorney.

21 6.2.7. The date.

22 6.2.8. A request for a formal hearing, if desired.

23 6.3. Board Disposition

1 6.3.1. The Board may hold a hearing to consider a petition for
2 declaratory statement. If a hearing is held, it shall be conducted in
3 accordance with Ark. Code Ann. § 25-15-208 and §25-15-213,
4 and the Board's rules for adjudicatory hearing.

5 6.3.2. The Board may rely on the statements of fact set out in the
6 petition without taking any position with regard to the validity of the
7 facts. Within ninety (90) days of the filing of the petition, the
8 Board will render a final order denying the petition or issuing a
9 declaratory order.

10 **7. ADJUDICATIVE HEARINGS**

11 7.1. SCOPE OF THIS CHAPTER. This chapter applies in all
12 administrative adjudications conducted by the Arkansas Board of
13 Dispensing Opticians. This procedure is developed to provide a
14 process by which the Board formulates orders (for example, an order
15 revoking a license to practice, or imposing civil penalties).

16 7.2. PRESIDING OFFICER. The Board shall preside at the hearing or
17 may designate one or more members of the Board or one or more
18 examiners, referees, or hearing officers to preside at a hearing.

19 7.3. APPEARANCES. Any party appearing in any Board proceeding has
20 the right, at his or her own expense, to be represented by counsel.

21 7.3.1. The respondent may appear on his or her own behalf.

22 7.3.2. Any attorney representing a party to an adjudicatory proceeding
23 must file notice of appearance as soon as possible.

1 7.3.3. Service on counsel of record is the equivalent of service on the
2 party represented.

3 7.3.4. On written motion served on the party represented and all other
4 parties of record, the presiding officer may grant counsel of record
5 leave to withdraw for good cause shown.

6 7.4. CONSOLIDATION. If there are separate matters that involve similar
7 issues of law or fact, or identical parties, the matters may be
8 consolidated if it appears that consolidation would promote the just,
9 speedy, and inexpensive resolution of the proceedings, and would not
10 unduly prejudice the rights of a party.

11 7.5. NOTICE TO INTERESTED PARTIES. If it appears that the
12 determination of the rights of parties in a proceeding will necessarily
13 involve a determination of the substantial interests of persons who are
14 not parties, the presiding officer may enter an order requiring that an
15 absent person be notified of the proceeding and be given an
16 opportunity to be joined as a party of record.

17 7.6. SERVICE OF PAPERS. Unless the presiding officer otherwise
18 orders, every pleading and every other paper filed for the proceeding,
19 except applications for witness subpoenas and the subpoenas, shall
20 be served on each party or the party's representative at the last
21 address of record.

22 7.7. INITIATION & NOTICE OF HEARING. An administrative adjudication
23 is initiated by the issuance by the Board of a notice of hearing. The

1 notice of hearing will be sent to the respondent by U.S. Mail, return
2 receipt requested, restricted delivery to the named recipient or his
3 agent. Notice shall be sufficient when it is so mailed to the
4 respondent's latest address on file with the Board. Notice will be
5 mailed at least 20 days before the scheduled hearing. The notice will
6 include:

7 7.7.1. A statement of the time, place, and nature of the hearing;

8 7.7.2. A statement of the legal authority and jurisdiction under which
9 the hearing is to be held; and

10 7.7.3. A short and plain statement of the matters of fact and law
11 asserted.

12 7.8. Motions. All requests for relief will be by motion. Motions must be in
13 writing or made on the record during a hearing. A motion must fully
14 state the action requested and the grounds relied upon. The original
15 written motion will be filed with the Board. When time allows, the
16 other parties may, within seven (7) days of the service of the written
17 motion, file a response in opposition. The presiding officer may
18 conduct such proceedings and enter such orders as are deemed
19 necessary to address issues raised by the motion. However, a
20 presiding officer, other than the Board, will not enter a dispositive
21 order unless expressly authorized in writing to do so.

22 7.9. ANSWER. A respondent may file an answer.

1 7.10. DISCOVERY. Upon written request, the Board will provide the
2 information designated in A.C.A §25-15-208 (a) (3). Such requests
3 should be received by the Board at least 10 days before the
4 scheduled hearing.

5 7.11. CONTINUANCES

6 7.11.1. The Complaint Committee may grant a continuance of hearing
7 for good cause shown. Requests for continuances will be made
8 in writing. The request must state the grounds to be considered
9 and be made as soon as practicable and, except in cases of
10 emergencies, no later than five (5) days prior to the date noticed
11 for the hearing. In determining whether to grant a continuance,
12 the Complaint Committee may consider:

13 7.11.1.1. Prior continuances;

14 7.11.1.2. The interests of all parties;

15 7.11.1.3. The likelihood of informal settlements;

16 7.11.1.4. The existence of an emergency;

17 7.11.1.5. Any objection;

18 7.11.1.6. Any applicable time requirement;

19 7.11.1.7. The existence of a conflict of the schedules of counsel,
20 parties, or witnesses;

21 7.11.1.8. The time limits of the request; and

22 7.11.1.9. Other relevant factors.

1 7.11.2. The Complaint Committee may require documentation of any
2 grounds for continuance.

3 7.12. HEARING PROCEDURES

4 7.12.1. The presiding officer presides at the hearing and may rule on
5 motions, require briefs, and issue such orders as will ensure the
6 orderly conduct of the proceedings; provided, however, any
7 presiding officer other than the Board shall not enter a dispositive
8 order or proposed decision unless expressly authorized in writing
9 to do so.

10 7.12.2. All objections must be made in a timely manner and stated on
11 the record.

12 7.12.3. Parties have the right to participate or to be represented by
13 counsel in all hearings or pre-hearing conferences related to their
14 case.

15 7.12.4. Subject to terms and conditions prescribed by the
16 Administrative Procedure Act, parties have the right to introduce
17 evidence on issues of material fact, cross-examine witnesses as
18 necessary for a full and true disclosure of the facts, present
19 evidence in rebuttal, and, upon request by the Board, may submit
20 briefs and engage in oral argument.

21 7.12.5. The presiding officer is charged with maintaining the decorum
22 of the hearing and may refuse to admit, or may expel, anyone
23 whose conduct is disorderly.

1 7.13.ORDER OF PROCEEDINGS. The presiding officer will conduct the
2 hearing in the following manner:

3 7.13.1. The presiding officer will give an opening statement, briefly
4 describing the nature of the proceedings.

5 7.13.2. The parties are to be given the opportunity to present opening
6 statements.

7 7.13.3. The parties will be allowed to present their cases in the
8 sequence determined by the presiding officer.

9 7.13.4. Each witness must be sworn or affirmed by the presiding
10 officer, or the court reporter, and be subject to examination and
11 cross-examination as well as questioning by the Board. The
12 presiding officer may limit questioning in a manner consistent with
13 the law.

14 7.13.5. When all parties and witnesses have been heard, parties may
15 be given the opportunity to present final arguments.

16

17 7.14.EVIDENCE

18 7.14.1. The presiding officer shall rule on the admissibility of evidence
19 and may, when appropriate, take official notice of facts in
20 accordance with all applicable requirements of law.

21 7.14.2. Stipulation of facts is encouraged. The Board may make a
22 decision based on stipulated facts.

1 7.14.3. Evidence in the proceeding must be confined to the issues set
2 forth in the hearing notice, unless the parties waive their right to
3 such notice or the presiding officer determines that good cause
4 justifies expansion of the issues. If the presiding officer decides to
5 admit evidence outside the scope of the notice, over the objection
6 of a party who did not have actual notice of those issues, that
7 party, upon timely request, will receive a continuance sufficient to
8 prepare for the additional issue and to permit amendment of
9 pleadings.

10 7.14.4. A party seeking admission of an exhibit must provide 12
11 copies of each exhibit at the hearing. The presiding officer must
12 provide the opposing parties with an opportunity to examine the
13 exhibit prior to the ruling on its admissibility. All exhibits admitted
14 into evidence must be appropriately marked and be made part of
15 the record.

16 7.14.5. Any party may object to specific evidence or may request
17 limits on the scope of the examination or cross-examination. A
18 brief statement of the grounds upon which it is based shall
19 accompany such an objection. The objection, the ruling on the
20 objection, and the reasons for the ruling will be noted in the
21 record. The presiding officer may rule on the objection at the time
22 it is made or may reserve the ruling until the written decision.

1 7.14.6. Whenever evidence is ruled inadmissible, the party offering
2 that evidence may submit an offer of proof on the record. The
3 party making the offer of proof for excluded oral testimony will
4 briefly summarize the testimony or, with permission of the
5 presiding officer, present the testimony. If the excluded evidence
6 consists of a document or exhibit, it shall be marked as part of an
7 offer of proof and inserted in the record.

8 7.14.7. Irrelevant, immaterial, and unduly repetitive evidence will be
9 excluded. Any other oral or documentary evidence, not privileged,
10 may be received if it is of a type commonly relied upon by
11 reasonably prudent men and women in the conduct of their affairs.

12 7.14.8. Reasonable inferences. The finder of fact may base its
13 findings of fact upon reasonable inferences derived from other
14 evidence received.

15 7.15. DEFAULT. If a party fails to appear or participate in an
16 administrative adjudication after proper service of notice, the Board
17 may proceed with the hearing and render a decision in the absence of
18 the party.

19 7.16. SUBPOENAS

20 7.16.1. At the request of any party, the Board shall issue subpoenas
21 for the attendance of witnesses at the hearing. The requesting
22 party shall specify whether the witness is also requested to bring
23 documents and reasonably identify said documents.

1 7.16.2. A subpoena may be served by any person specified by law to
2 serve process or by any person who is not a party and who is
3 eighteen (18) years of age or older. Delivering a copy to the
4 person named in the subpoena shall make service. Proof of
5 service may be made by affidavit of the person making service.
6 The party seeking the subpoena shall have the burden of
7 obtaining service of the process and shall be charged with the
8 responsibility of tendering appropriate mileage fees and witness
9 fees pursuant to Rule 45, Arkansas Rules of Civil Procedure. The
10 witness must be served at least two days prior to the hearing. For
11 good cause, the Board may authorize the subpoena to be served
12 less than two days before the hearing.

13 7.16.3. Any motion to quash or limit the subpoena shall be filed with
14 the Board and shall state the grounds relied upon.

15 7.17. RECORDING THE PROCEEDINGS. The responsibility to record the
16 testimony heard at a hearing is borne by the Board. Upon the filing of
17 a petition for judicial review, the Board will provide a verbatim
18 transcript of testimony taken before the Board.

19 7.18. FACTORS TO BE CONSIDERED IN IMPOSING SANCTIONS. In
20 addition to any other considerations permitted by Ark. Code Ann. § 17-
21 89-101 et seq., if applicable, the Board in imposing any sanction may
22 consider the following:

- 1 7.18.1. The nature and degree of the misconduct for which the
2 licensee is being sanctioned.
- 3 7.18.2. The seriousness and circumstances surrounding this
4 misconduct.
- 5 7.18.3. The loss or damage to clients or others.
- 6 7.18.4. The assurance that those who seek similar professional
7 services in the future will be protected from the type of misconduct
8 found.
- 9 7.18.5. The profit to the licensee.
- 10 7.18.6. The avoidance of repetition.
- 11 7.18.7. Whether the conduct was deliberate, intentional, or negligent.
- 12 7.18.8. The deterrent effect on others.
- 13 7.18.9. The conduct of the individual during the course of the
14 disciplinary proceeding.
- 15 7.18.10. The professional's prior disciplinary record, including
16 warnings.
- 17 7.18.11. Matters offered by the professional in mitigation or
18 extenuation, except that a claim of disability or impairment
19 resulting from the use of alcohol or drugs may not be considered
20 unless the professional demonstrates that he or she is
21 successfully pursuing in good faith a program of recovery.
- 22 7.19. Final Order. The Board will serve on the respondent a written order
23 that reflects the action taken by the Board. The order will include a

1 recitation of facts found based on testimony and other evidence
2 presented and reasonable inferences derived from the evidence
3 pertinent to the issues of the case. It will also state conclusions of law
4 and directives or other disposition entered against or in favor of the
5 respondent. The order will be served personally or by mail on the
6 respondent. If counsel represents respondent, service of the order on
7 respondent's counsel shall be deemed service on the respondent.

8 **8. DEFINITIONS**

9 8.1. The Board defines the following major terms used in Ark. Code Ann.
10 §17-89-101 et seq. within the Rules and Regulations promulgated by
11 the Board:

12 8.1.1. "Ophthalmic Dispensing" means the preparation of laboratory
13 work orders, verification, and dispensing of spectacle lenses,
14 spectacles, eyeglasses, and/or parts thereof to the intended
15 wearer thereof on a written prescription from a licensed physician
16 skilled in disease of the eye or licensed optometrist. It shall
17 include; the measuring, fitting, adapting, and adjusting of such
18 spectacle lenses, spectacles, eyeglasses, and/or parts thereof to
19 the human face; the preparation and delivery of work orders to
20 laboratory technicians engaged in grinding lenses and fabrication
21 of eyewear; the verification of the quality of finished spectacle
22 lenses, spectacle or eyeglasses; and the adjustment or repair of
23 spectacle frames to the human face. The prescribing, adapting,

- 1 fitting, duplicating, dispensing, modifying, selling or supplying of
2 contact lenses for or to the human eye is specifically excluded.
- 3 8.1.2. "Licensed Dispensing Opticians" means any person licensed by
4 the Arkansas Board of Dispensing Opticians to engage in
5 ophthalmic dispensing.
- 6 8.1.3. "Registered Dispensing Optician" means any person registered
7 by the Arkansas Board of Dispensing Opticians to engage in
8 ophthalmic dispensing.
- 9 8.1.4. "Apprentice Dispensing Optician" means an individual registered
10 with the Arkansas Board of Dispensing Opticians to work under
11 the supervision of a licensed or registered dispensing optician or a
12 physician skilled in disease of the eye or optometrist licensed by
13 this State.
- 14 8.1.5. "Student Dispensing Optician" means an individual enrolled and
15 attending a school of Opticianry which is accredited by a national
16 accreditation organization and approved by the board.
- 17 8.1.6. "Supervision" means the direct personal physical provision of
18 direction and control through personal inspection.
- 19 8.1.7. "Direct personal physical provision of direction and control"
20 means in the optical dispensary and immediately available to
21 address through personal inspection the actions of an apprentice
22 or student optician.

- 1 8.1.8. The term “Board” as used in this Act ~~shall at all time means and~~
2 ~~be interpreted as the Arkansas Board of Dispensing Opticians.~~
- 3 8.1.9. The term “person” as used in this Act shall be interpreted to
4 include individuals, partnerships, firms, corporations, professional
5 corporations, unincorporated associations, or any of the foregoing.
- 6 8.1.10. A “full service optical laboratory” fabricates prescription lenses
7 from unfinished or semi-finished lenses.
- 8 8.1.11. “Side-by-side” operation means one in which a registered,
9 licensed or apprenticed dispensing optician directly or indirectly
10 controls or attempts to control the professional judgment, manner
11 of practice or the practice of a licensed optometrist or physician
12 skilled in the disease of the eye. For the purpose of this
13 subsection, “controlling or attempting to control the professional
14 judgment, manner of practice, or the practice of a licensed
15 optometrist or physician skilled in the disease of the eye” may
16 include or relate to but not be limited to:
- 17 8.1.11.1. Setting or attempting to influence the professional
18 fees or office hours of a licensed optometrist or
19 physician skilled in disease of the eye.
- 20 8.1.11.2. Termination or threatening to terminate any lease,
21 agreement, or other relationship in an effort to control,
22 the professional judgment, manner of practice, or

1 practice of a licensed optometrist or physician skilled
2 in disease of the eye.

3 8.1.11.3. Defining the scope of or time limits for vision
4 examinations.

5 8.1.11.4. Where more than one optometrist or physician
6 skilled in disease of the eye is generally available, the
7 repeated directing of persons seeking vision care to a
8 particular optometrist or physician skilled in disease of
9 the eye, group practitioner or professional association,
10 for the purpose of splitting fees, receive a kickback or
11 rebate.

12 8.1.11.5. Distributing or causing to be distributed
13 professional business cards or like materials of a
14 particular optometrist or physician skilled in the
15 disease of the eye, group, or professional association.

16 8.1.11.6. Advertising in any way that indicated vision
17 examinations might be scheduled or arranged through
18 or by the dispensing optician's office.

19 8.1.11.7. Advertising that indicated vision examinations can
20 be secured "nearby" or similar statements.

21 8.1.12. "Capping and Steering" is defined as the practice of a
22 licensed, registered, or apprenticed dispensing optician or their
23 employees repeatedly referring prospective customers to a

specific optometrist or physician skilled in the disease of the eye,
for the purpose of securing a current prescription for eye glasses.

9. LICENSURE, REGISTRY OR OFFICE PERMIT REQUIREMENTS AND QUALIFICATIONS

9.1. General. All board action regarding licensure shall be governed by
Ark. Code Ann. §§ 17-89-101 et seq. and, when applicable Ark. Code
Ann. §§ 25-15-208 to 213.

9.2. Requirement to Keep Current Addresses on File. All persons holding
a license issued by the board are required to provide the board with
information so that the board can remain in contact and provide notice
of complaints and/or hearings. The licensee is required to provide is
required to provide written notice to the board of any change in
business and/or residential address within 10 working days of the
change. Service of notices of hearing sent by mail will be addressed
to the latest address on file with the board.

9.3. Licensure or Registry Requirements. Except as otherwise provided in
Ark. Code. Ann. §17-89-101 et seq., any person not licensed to
practice medicine or optometry in Arkansas who shall perform or
purport to perform any act described in Section 8.1.1, Ophthalmic
Dispensing definition, must be licensed or registered by the Arkansas
Board of Dispensing Opticians.

9.4. Qualifications for Licensure or Registry. Each applicant for licensure
or registry shall make application to the Board upon a form and in

1 such a manner as the Board may require at least 60 days prior to the
2 date of examination. Each applicant shall:

3 9.4.1. Verify that he or she is over the age of 21 years;

4 9.4.2. Be of good moral character;

5 9.4.3. Be a high school graduate or the equivalent thereof; and
6 provide a certified copy of the high school transcript or
7 Graduate Equivalency Diploma (GED).

8 9.4.4. Submit written proof that he or she possesses the
9 experience and/or education requirements which are
10 specified in Ark. Code. Ann §17-89-302 and §17-89-303.

11 ~~Said written proof must be attested to by the person by~~
12 ~~whom the applicant was employed and must be duly~~
13 ~~notarized by an official of the state.~~

14 9.4.4.1. Provide a certified copy of transcript from a
15 nationally accredited organization approved by this
16 Board or;

17 9.4.4.2. Apprenticed Dispensing Opticians shall submit
18 copies of all Supervision Agreements and Quarterly
19 Supervision Reports as written proof that they have
20 met the experience requirements, or

21 9.4.4.3. Applicants submitting experience for three (3)
22 years' dispensing experience under the direct
23 supervision of any Arkansas-licensed optometrist or

1 Arkansas-licensed physician skilled in disease of the
2 eye shall submit the Board approved Supervision
3 Report forms attested to by the optometrist or
4 physician skilled in disease of the eye. Said
5 supervised period of time shall consist of no less than
6 four thousand eight hundred hours in the last five (5)
7 years to qualify for the examination.

8 9.4.5. Enclose the examination fee of two hundred dollars
9 (\$200.00) made payable to the Arkansas Board of
10 Dispensing Opticians. Additional examination shall be
11 given upon the payment of a fee of one hundred and fifty
12 dollars (\$150.00).

13 9.4.6. Enclose a current photograph approximately one inch by
14 one inch (1" x 1") of the Applicant.

15 9.5. Review of Application.

16 9.5.1. The application and supporting documentation will be reviewed
17 by the Secretary-Treasurer. The Board will inform the applicant in
18 writing if it determines that the application is incomplete, and will
19 specify why the application is incomplete. When a completed
20 application, a supplemental application, or the requested
21 information is returned, the Board will reinitiate action on the
22 application for license.

1 9.5.2. Eligibility Testing Date. Applications must be completed thirty
2 (30) days prior to the testing date. Applications completed and
3 received by the Board after the Eligibility Testing Date will be
4 scheduled for the following testing cycle.

5 9.6. Denial of Application for Licensure.

6 9.6.1. If a preliminary determination is made that the application
7 should be denied, the Board will inform the application of the
8 opportunity for a hearing on the application.

9 9.6.2. The grounds or basis for the proposed denial of a license will be
10 set for in writing by the Board. Any hearing on the denial of a
11 license will be conducted in accordance with Ark. Code Ann. §25-
12 15-208 and Ark. Code Ann. §25-15-213, and unless otherwise
13 provide by law, the applicant has the burden of establishing
14 entitlement to the license.

15 9.7. Written Examination for Licensure or Registry. The Board shall
16 establish the context of the ~~separate~~ examinations for Registry or
17 Licensure and shall conduct an examination of applicants for Optician
18 Registry or Licensure at least once each year at a time and place
19 specified by the Board. Applicants shall be examined in the areas of
20 mechanical optics, occupational vision requirements, the taking of
21 facial measurements for proper frame sizing, ophthalmic lens type,
22 fitting and adjusting of glasses to the face, and any other areas
23 deemed necessary by the Board. Examinations shall be conducted in

1 a fair and impartial manner and each applicant must score at least 70
2 percent (70%) on the full examination to qualify for Registry or
3 Licensure; however, a grade of under 70 on any section requires that
4 this section must be successfully retaken with a grade of at least 70
5 seventy percent (70%) in order to qualify for Registry or Licensure.

6 9.8. Certificates. Every Applicant successfully passing the examination of
7 the Board and satisfying the qualifications required under Ark. Code.
8 Ann. § 17-89-304 and these Board rules and regulations shall receive
9 from the Board a "Certificate of Licensure", or a "Certificate of
10 Registry" to provide ophthalmic dispensing services to the public as a
11 registered or licensed dispensing optician in Arkansas.

12 9.9. Office Permit Requirements. Pursuant to ~~Act 524 of 1999~~ Ark. Code
13 Ann. § 17-89- 408 (a), it is unlawful for any person or legal entity to
14 conduct an office or place of business in this State, where ophthalmic
15 dispensing services are offered or performed without an office permit.

16 9.10. Qualifications for Office Permit. All Applicants for an office permit
17 must complete the Board approved application form and enclose an
18 application fee of \$60.00 each location where an office permit is being
19 sought. ~~present a letter which includes:~~

20 9.10.1. ~~Applicant's name, mailing address and phone number;~~

21 9.10.2. ~~Address of the location where the office permit will be~~

22 ~~used;~~

1 9.10.3. ~~If applicant is a corporation, copies of the Articles of~~
2 ~~Incorporation, address of the corporate office and the name~~
3 ~~and address of the person registered to accept service for~~
4 ~~the corporation;~~

5 9.10.4. ~~If the applicant is a foreign corporation, proof of~~
6 ~~authority to do business within the State of Arkansas~~

7 9.10.5. ~~Name of any licensed or registered dispensing~~
8 ~~optician(s) who will be working at the location sought to be~~
9 ~~permitted;~~

10 9.10.6. ~~Enclose an application fee in the amount of \$60.00 for~~
11 ~~each location where an office permit is being sought.~~

12 9.11. Office Permit to be displayed. Each office permit obtained shall be
13 prominently displayed in each office or place of business in this State
14 where ophthalmic dispensing services are offered or performed.

15 **10 APPRENTICES AND STUDENTS**

16 10.1 Use of Apprentices Approved. Except as limited in Section 10.9 of
17 these rules, licensed or registered dispensing opticians may utilize
18 no more than three (3) apprentice dispensing opticians to engage in
19 ophthalmic dispensing under their direct personal physical
20 supervision and at the same location where the licensed or
21 registered optician dispenses.

22 10.2 Apprentice Application. Apprentice dispensing opticians shall be
23 approved by the Board upon receipt of a properly completed

1 application, a current photograph of himself/herself approximately
2 one inch by one inch (1"x1") and the payment of a sixty dollar
3 (\$60.00) fee to the Board.

4 10.3 Apprentice Supervision. Apprentice dispensing opticians must
5 submit with their application request a Supervision Agreement in the
6 form and format provided by the Board and signed by the Licensed
7 or Registered Dispensing Optician under whose supervision they
8 will work during their apprenticeship. Quarterly, and at the
9 termination of any supervision agreement, the apprenticed
10 dispensing optician shall submit a Supervision Report in the form
11 and format provided by the Board attested to by the Supervising
12 Licensed or Registered Dispensing Optician. Apprenticed Licensed
13 Opticians shall keep copies of all Supervision Agreements and
14 Quarterly Supervision Reports for submission with application to test
15 for licensure.

16 10.4 Termination of Supervision.

17 10.4.1 If a supervision agreement is terminated for any reason and
18 the Apprenticed dispensing opticians has not obtained the
19 required supervision time for licensure as a Registered
20 Dispensing Optician, a new Supervision Agreement must be
21 submitted to the Board within 30 days.

22 10.4.2 Termination of the supervision agreement occurs when for any
23 reason the supervisor is no longer able to provide direct

1 personal physical provisions of direction and control to the
2 supervisee.

3 10.4.3 The Apprentice and the Supervisor are responsible for
4 notifying the Board in writing of the termination of the
5 supervision agreement.

6 10.5 Failure to Submit Supervision Agreement. Failure to submit a
7 Supervision Agreement in the time required shall result in immediate
8 suspension of the Apprentice license without hearing.

9 10.6 Reinstatement of Apprentice license. The Apprenticed optician
10 license shall be eligible for reinstatement for a period of 180 days
11 upon the following conditions.

12 10.6.1 Submission of a signed Supervision Agreement.

13 10.6.2 Payment of any and all annual renewal fees and/or late
14 payment penalties accruing during the suspension.

15 10.6.3 Payment of a reinstatement fee of \$30.00.

16 10.7 Failure to Reinstate Suspended Apprenticed License. Any
17 apprenticed dispensing optician license not reinstated within the
18 prescribed time period will be considered revoked without hearing.
19 Any person for whom their apprenticed dispensing optician license
20 has been revoked for failure to reinstate shall be required to reapply
21 for licensure. Any hours of supervision earned prior to the re-
22 application process may be considered under the new apprentice

1 license provided the hours are earned within the previous five (5)
2 years before applications for testing for licensure is made.

3 10.8 Apprenticed Supervision Requirements. Apprenticed dispensing
4 opticians must obtain four thousand eight hundred (4800)¹ actual
5 hours of supervision to qualify as three (3) years of supervision.
6 These hours must be submitted on the Board approved form and
7 certified by the Licensed or Registered dispensing optician under
8 whose supervision the apprentice is acting.

9 10.9 Student Opticians. A student optician is an individual enrolled in a
10 school which is accredited by an organization recognized by the
11 United States Department of Education or by the Council on
12 Postsecondary Accreditation.

13 10.9.1 For the purpose of internship programs or other educational
14 program which will place the student in contact with the
15 general public in the area of ophthalmic dispensing, student
16 opticians shall apply for a Student Optician License. Said
17 license shall be approved by the Board upon receipt of a
18 properly completed application, a current photograph of
19 him/her approximately one inch by one inch (1" X 1") and a
20 statement from the institution or instructor outlining the course
21 work to be conducted which will place the student in an

¹ Hours computed on a basis of 32 hours per week for a period of 50 weeks in a twelve month period of time times 3 years.

1 ophthalmic dispensing situation. No fee shall be required for a
2 Student Optician license.

3 10.9.2 Licensure will subject the licensee to the law governing
4 dispensing opticians as outlined in Ark. Code Ann. § 17-89-
5 201 et. seq. and the Rules and Regulations of the Arkansas
6 Board of Dispensing Opticians. Upon licensure, student
7 opticians will be issued a photo badge to wear at all times they
8 are performing duties as a student optician. The license shall
9 be issued for a period not longer than the stated coursework
10 or internship but not longer than six (6) months. Student
11 Opticians shall renew their license for additional course work.

12 10.9.3 Except as limited by section 10.9 of these rules, licensed or
13 registered dispensing opticians may utilize no more than two
14 (2) student opticians to engage in ophthalmic dispensing
15 under their direct personal physical supervision and at the
16 same location where the licensed or registered optician
17 dispenses. Student Opticians work hours may not exceed
18 class credit hours per week or stated internship hours not to
19 exceed 20 hours per week. Student opticians shall not be
20 paid.

21 10.9.4 Supervision of Student Opticians. Student Opticians must
22 submit to the Board Quarterly Supervision Reports in the form
23 and format prescribed by the Board during any period of time

1 they are providing dispensing services to the general public
2 under the supervision of a Licensed or Registered Dispensing
3 Optician. Supervision hours obtained under the auspices of a
4 Student License shall not be eligible for apprenticeship hours.

5 10.10 Supervising Apprenticed and Student Opticians. A Licensed or
6 Registered Optician may not supervise more than 2 full time
7 Apprenticed Dispensing Opticians and 2 part-time Student
8 Dispensing Opticians.

9 **11 ANNUAL RENEWAL**

10 11.1 Renewal of a License, Registration or Apprenticeship. Application
11 for renewal of Licensed, Registered or Apprenticed dispensing
12 opticians shall be received or postmarked no later than June 10th of
13 each year. Each application for renewal shall include a renewal fee
14 in the amount of sixty dollars (\$60.00) payable to the Arkansas
15 Board of Dispensing Opticians. On or before June 30th July 1 of
16 ~~each year, every licensed, registered or apprentice dispensing~~
17 ~~optician in this state shall pay to the Secretary-Treasurer of the~~
18 ~~Board a sixty dollar (\$60.00) renewal fee and~~ Each applicant shall
19 submit a current photograph of himself/herself approximately one
20 inch by one inch (1"x 1"). Furthermore, each licensed or registered
21 dispensing optician shall attest to his or her compliance with all of
22 the provisions of Ark. Code. Ann. § 17-89-101 et seq., and the
23 Arkansas Board of Dispensing Optician's Rules and Regulations on

1 the annual licensure and registry renewal forms. Upon submission
2 of the photograph and payment of such renewal fee and in absence
3 of a Board finding against renewal under these rules and
4 regulations, such person shall have his Certificate of Licensure,
5 Registry or Apprenticeship renewed for an additional year
6 commencing on July 1 of that year.

7 11.2 Continuing Education. ~~Effective as to licenses to be renewed July~~
8 ~~4, 1987,~~ Pursuant to Ark. Code. Ann. §17-89-308, each licensed,
9 registered, or apprenticed optician registered under the provisions of
10 Ark. Code. Ann. §17-89-101 ~~et seq. of the Acts of the General~~
11 ~~Assembly of the State of Arkansas~~ applying for the renewal of his
12 license, shall furnish to the Arkansas State Board of Dispensing
13 Opticians satisfactory evidence that he *successfully completed four*
14 *(4) hours in even numbered years and five (5) hours including one*
15 *hour of jurisprudence in odd numbered years of ~~nine~~* continuing
16 education hours approved by either the Arkansas State Board of
17 Dispensing Opticians or the American Board of Opticianry ~~in the two~~
18 ~~years immediately~~ *in the year* preceding the expiration date of the
19 license being renewed pursuant to Ark. Code. Ann. § 17-89-307. In
20 order to obtain credit for hours that are received, a licensed,
21 registered or apprenticed optician must submit all evidence
22 establishing the approved hours completed to the Board on or
23 before ninety (90) days after the completion of the hours.

Continuing education hours shall be obtained in person with the presenter. The Board will not accept continuing education hours obtained by correspondence or video presentation. Continuing education hours through any form of live media broadcast must receive prior approval by the Board. The Board shall recognize those schools which are accredited by an organization recognized by the United State Department of Education or by the Council on Postsecondary Accreditation.

11.3 Documentation of Continuing Education. Documentation of said continuing education shall be a condition precedent for the renewal of licenses for registered, licensed and apprentice opticians. Provided, however, the board shall reinstate any license not renewed for failure to comply with this regulation upon the subsequent presentation of satisfactory evidence of said continuing education and payment of all fees due on or before October 1 of each year.

11.4 Exception to Continuing Education Requirement. Provided, however, that any optician who, because of illness or other unavoidable circumstances, is unable to comply herewith may make application to the Board, reasonably documenting the circumstances as to why he or she is unable to comply, and the Board in its discretion may relieve the applicant from so complying

1 for such time and under such circumstances as the Board deems
2 proper.

3 11.5 Renewal Fee for Optician. Upon receipt of the sixty dollars (\$60.00)
4 renewal fee each licensed, registered, and apprenticed optician will
5 be issued a photo badge to wear at all times they are performing
6 duties of a registered, licensed or apprentice optician.

7 11.6 Lost or Destroyed Badges. Replacement badges will be provided
8 by the Board for all lost or destroyed badges at a fee of ten dollars
9 (\$10.00).

10 11.7 Failure of Licensee, Registrant or Apprentice to Pay Renewal. Any
11 licensed, registered or apprentice dispensing optician who has not
12 paid his or her renewal fee in full by July 1 of that year shall be
13 required to pay the following renewal penalty.

14	July 1 – July 31	\$25.00
15	August 1 – August 31	\$50.00
16	September 1 – September 30	\$75.00

17 11.8 Failure of Licensee Registrant or Apprentice to Pay Renewal by
18 September 30. ~~All certificates of licensure, registry or apprentice,~~
19 ~~not renewed by July 1 are invalid, and such persons will be~~
20 ~~considered to be practicing without a license. If said license, registry~~
21 ~~or apprentice certificate is not renewed and penalty paid by~~
22 ~~September 30 of that year, said license, registry or apprentice~~
23 ~~certificate is non-renewable. Any licensed, registered or apprenticed~~

dispensing optician who fails to renew their license on or before
September 30 of each year and continues to provide ophthalmic
dispensing services shall be deemed to have committed a violation
of Ark. Code Ann. §17-89-309 (a) and may result in action by the
Board pursuant to Ark. Code Ann. 17-89-309 (b).

11.9 Inactive Status.

11.9.1 A licensed or registered dispensing optician who fails to renew
their license shall be placed on inactive status. The Board
shall notify the licensed or registered dispensing optician as
soon as practical after the renewal period of their inactive
status and inability to continue to provide ophthalmic
dispensing services by certified mail at the last address
provided by the licensee. Mailing will constitute service.

11.9.2 A licensed or registered dispensing optician may request to be
placed upon inactive status by providing a written statement to
the Board.

11.9.3 The Board may approve inactive status for a period of no
longer than two (2) years and shall notify the requesting
licensed or registered dispensing optician in writing of the
approval.

11.9.4 Licensed or registered dispensing opticians may return to
active status within 2 years upon payment of all renewal fees,
late penalties and submission of Continuing Education hours.

Failure to return from inactive status after two (2) years shall be considered voluntary surrender of the license by the licensee without further notice.

11.10 Renewal Fee for Office Permit. Each office permit must be renewed on or before July 1 of each year. Application for renewal should be received or postmarked no later than June 10th of each year. Such renewal shall include a completed renewal form along with \$60.00 renewal fee.

11.11 Failure to Renew Office Permit and Pay Renewal Fee. Any office which fails to renew its Office Permit and pay the renewal fee by July 1 shall be considered delinquent and subject to the following penalty.

July 1 – July 31	\$25.00
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August 1 – August 31	\$50.00
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September 1 – September 30	\$75.00
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11.12 Failure to Renew Office Permit by September 30. Any individual, partnership, corporation or other business entity who fails to renew an office permit by September 30 including the payment of the renewal fee and any appropriate penalty and continues to provide ophthalmic dispensing services shall be deemed to have committed a violation of Ark. Code Ann. § 17-89-408 (a) and may result in action by the Board pursuant to Ark. Code Ann. § 9-89-408 (d).

12 BRANCH OFFICES

- 1 12.1 Optician Present. All open optical businesses which are subject to
2 the provision of Ark. Code Ann. § 17-89-101 et seq. ~~Act 589 of the~~
3 ~~Acts of Arkansas 1984~~ must have physically present within the
4 place of business at all times a licensed or registered dispensing
5 optician.
- 6 12.2 Branch Office Limit. No licensed or registered dispensing optician
7 or person in this state shall establish more than two ophthalmic
8 dispensing branch offices in addition to his principal office unless he
9 shall first have secured a branch office permit from the Board.
- 10 12.3 Factors for Board to Consider. The Board shall consider, but, not
11 be limited to, the following factors when ruling on an application for
12 a permit for additional branch offices:
- 13 12.3.1 The availability of qualified personnel to staff the
14 proposed ophthalmic dispensing office;
- 15 12.3.2 The established standards of service of the applicant;
- 16 12.3.3 The assurance of adequate supervision of the service
17 provided by the proposed branch office;
- 18 12.3.4 The applicant's established record of compliance with
19 the provisions of Ark. Code. Ann. § 17-89-101 et seq.
20 and the rules and regulations of the Arkansas Board of
21 Dispensing Opticians.
- 22 12.4 Name of Optician Displayed. The name and Certificate of Registry
23 or Licensure of the supervising dispensing optician shall be

1 prominently displayed at all times in each ophthalmic dispensing
2 office.

3 **13 CERTIFICATE OF OWNERSHIP**

4 13.1 Annual Filing of Certificate of Ownership. Each optical dispensary
5 in the State of Arkansas whose title does not contain the proper
6 name of an Arkansas optometrist or Arkansas physician skilled in
7 the diseases of the eye, or a licensed or registered dispensing
8 optician holding a certificate of licensure or registry in the State of
9 Arkansas must file a certificate of ownership each year with the
10 Arkansas Board of Dispensing Opticians between June 1 and June
11 30. Each certificate of ownership must give the name and address
12 of the dispensary, the optometrist or physician skilled in diseases of
13 the eye, or licensed or registered dispensing optician or person who
14 owns or maintains legal responsibility of the dispensary.

15 13.2 Failure to File Certificate of Ownership. When the Board
16 determines that a violation of this requirement has occurred, the
17 Board may undertake an investigation to determine ownership. If
18 ownership is determined to be an optometrist or a physician skilled
19 in diseases of the eye, the Board shall report the failure to file the
20 Certificate of Ownership to the appropriate governing board of the
21 optometrist or physician skilled in diseases of the eye. If the
22 ownership is determined to be a licensed or registered optician, the

1 Board shall initiate a complaint for violation of the rule of this Board
2 and the law of the State of Arkansas.

3 **14 COMPLAINTS**

4 14.1 Composition of the Complaint Committee:

5 14.1.1 The Complaint Committee shall consist of the
6 Secretary/Treasurer of the Board and any other member
7 appointed by the Chair of the Board.

8 14.2 Procedure for Initiation of Complaints:

9 14.2.1 Initiation. The formal investigation of a complaint against a
10 licensed, registered, apprentice or student optician may be
11 initiated when the complaint is in writing and filed with the
12 board. The complaint must contain a brief statement setting
13 forth the allegations of fact and naming the optician against
14 whom the complaint is filed.

15 14.2.2 Prima Facie Determination. Upon receipt of a complaint, the
16 Complaint Committee shall review same to determine whether
17 the complaint states a prima facie violation of any provision of
18 A.C.A §17-89-201 or Board regulations. Should the Complaint
19 Committee determine that the complaint does not state a
20 prima facie violation of the law or other Board Rules and
21 Regulations the Secretary/Treasurer shall submit the
22 complaint to the Board at the first available opportunity for the
23 Board's determinations whether a prima facie case is stated in

1 the complaint. Should the Board determine the complaint fails
2 state a prima facie violation; the Board shall notify the
3 complainant the complaint has been dismissed.

4 14.2.3 Board Initiation. The Board may initiate an investigation upon
5 its own motion when it has reason to believe a violation of
6 A.C.A. § 17-89-201 et seq. or Board regulation may have
7 occurred. Individual board members should utilize the written
8 complaint method for complaints against individual dispensing
9 opticians.

10 14.2.4 Time Limit for Filing of Complaint. The Complaint committee
11 may consider complaints only if the complaint was filed within
12 one (1) year from the time the alleged complaint either
13 occurred or was discovered. Any complaint not received within
14 this time limit shall not be considered and the complainant
15 shall be so notified.

16 14.3 Procedure for Investigation of Complaints

17 14.3.1 Notification of the Respondent. If the complaint appears to
18 state a prima facie violation of the law and/or other Board rules
19 and regulations the Complaint Committee shall notify the
20 dispensing optician named in the complaint by certified or
21 registered mail of the complaint and request a written
22 response to the allegation/s.

- 1 14.3.2 Investigation. Upon receipt of the licensee's response or upon
2 the expiration of the time period permitted for the licensee's
3 response, the Complaint Committee may conduct any further
4 inquiry or investigation which appears to be appropriate based
5 upon the circumstances of the individual case.
- 6 14.3.3 Investigative Officer. The Investigative Officer shall be a
7 person designated by the Chair of the Board. The Chair of the
8 Board shall agree, or contract, to pay compensation to, or
9 reimburse the expenses of, any person serving as
10 investigative officer authorized by the Board.
- 11 14.3.4 Investigative Report. Upon completion of the investigation, the
12 investigative officer shall provide a written report to the
13 Complaint Committee the results of the investigation. The
14 Complaint Committee will recommend to the Board whether to
15 conduct a hearing, take other action or dismiss the complaint.
16 The report of the Complaint Committee shall be a summary of
17 the results of the investigation and shall be presented to the
18 Board without naming the licensee.
- 19 14.4 Action by Board. A majority vote of the board shall be required to
20 support the recommendation of the Complaint Committee.
- 21 14.4.1 If the board agrees with the determination of the Complaint
22 Committee that the case should be dismissed, the
23 complainant and the respondent shall be so notified.

- 1 14.4.1.1 Additional Evidence. If additional evidence of conduct
2 contrary to the laws, Rules and/or Regulations governing
3 Dispensing Opticians is presented within sixty (60) days
4 after the matter has been closed with no action, the case
5 may be reopened and acted upon under regular
6 procedures.
- 7 14.4.2 If the board determines that the complaint presents sufficient
8 evidence of a violation; it may decide to resolve the matter
9 through an informal meeting, an offer of consent agreement or
10 through a formal disciplinary hearing.
- 11 14.4.2.1 If the board votes to hold a formal hearing, the board
12 shall comply with the requirements of the Administrative
13 Procedure Act.
- 14 14.4.2.2 The Board may offer or the Respondent may request an
15 informal hearing of a complaint before the Board
16 consisting of a face to face meeting with the Respondent
17 to discuss the allegations of the complaint. Prior to an
18 informal hearing the Respondent must sign a consent
19 statement agreeing to the terms and conditions of an
20 informal hearing.
- 21 14.4.2.3 If the Board determines that a consent agreement may
22 be appropriate, the Board shall authorize its Attorney to
23 enter into negotiations for a consent agreement subject

1 to the Board's final approval. The Board may
2 recommend terms for a consent agreement offer by the
3 attorney to the respondent based only upon the
4 anonymous report presented to the Board by the
5 Complaint Committee.

6 14.5 Disqualification. During a formal disciplinary hearing, any members of
7 the Board who served on the Complaint Committee, was involved in
8 the investigation or who initiated the complaint shall be disqualified
9 from participation in the hearing.

10 14.6 Counter Complaints. The Arkansas Board of Dispensing Opticians
11 will not accept formal complaints from a respondent against a
12 complainant during the course of an investigation of the initial
13 complaint. Counter charges will only be considered after the
14 disposition of the initial complaint.

15 **15 DENIAL, SUSPENSION, OR REVOCATION OF LICENSE,**
16 **REGISTRATION OR OFFICE PERMIT**

17 15.1 SUSPENSION, REVOCATION, ANNULMENT OR WITHDRAWAL.
18 Prior to the entry of a final order to suspend, revoke, annul or
19 withdraw a license, registration, or office permit, or to impose other
20 sanctions upon a licensee or permit holder, the board will serve the
21 licensee or permit holder a notice of hearing in the manner set out in
22 Ark. Code Ann. §25-15-208 and Section 7.7 of these rules.

1 15.1.1 The board has the burden of proving the alleged facts and
2 violations of law stated in the notice.

3 15.2 VOLUNTARY SURRENDER OF LICENSE. The licensee, in lieu of
4 formal disciplinary proceedings, may offer to surrender his or her
5 license, subject to the Board's determination to accept the proffered
6 surrender, rather than conducting a formal disciplinary proceeding.

7 15.3 Basis of Suspension, Revocation or Denial. The board shall revoke,
8 suspend or refuse to issue a license or registration of any
9 dispensing optician or apprenticeship for any violation of any
10 provision of Ark. Code. Ann. §17-89-201 et seq., as amended, or of
11 any of these rules and regulations, including, but not limited to, the
12 following:

13 15.3.1 The applicant, licensee, registrant, apprentice or person
14 obtaining a license, registration, apprenticeship or office permit
15 by means of fraud, misrepresentation, or concealment of
16 material facts;

17 15.3.2 The applicant, licensee, registrant or apprentice engaging in
18 conduct, including, but not limited to, engaging in the
19 advertising practice commonly known as "bait and switch," or
20 establishing an ophthalmic dispensing business immediately
21 adjacent to the office of a licensed optometrist or physician
22 skilled in the disease of the eye in what is commonly known as

1 a "side-by-side" operation, or engaging in the referral
2 procedure commonly known as "capping and steering";

3 15.3.3 Any licensed, registered or apprenticed dispensing optician,
4 either directly or indirectly, to participate in any manner in the
5 division, assignment, rebate, kickback, splitting or refunding of
6 service fees or costs of completed eyeglasses with a physician
7 skilled in the disease of the eye or optometrist. Nothing in the
8 above is to be construed so as to interfere with the ownership,
9 profit sharing programs, pensions, or retirement programs of
10 any optometrist's or ophthalmologist's office where the
11 professional is incorporated.

12 15.3.4 Any licensed, registered or apprenticed dispensing optician or
13 person requesting, encouraging, or enticing a licensed
14 optometrist or physician skilled in disease of the eye to locate
15 an office for the purpose of conducting his professional
16 practice adjacent to an Opticianry for the purpose of capping
17 and steering as defined by these regulations.

18 15.3.5 The applicant, licensee, registrant, apprentice or person being
19 convicted of a felony in any state or federal court, and not
20 pardoned, if the acts for which the person is convicted are
21 found by the board to have a direct bearing on whether he
22 should be entrusted to serve the public in the capacity of a
23 dispensing optician.

- 1 15.3.6 The applicant, licensee, registrant, apprentice or person
2 violating any prohibitive provision under this chapter;
- 3 15.3.7 The applicant, licensee, registrant, apprentice or person
4 engaging in any fraudulent, misleading, or deceptive
5 advertising²;
- 6 15.3.8 The applicant, licensee, registrant, apprentice or person failing
7 to qualify for the license, registration, apprenticeship or office
8 permit;
- 9 15.3.9 The applicant, licensee, registrant, apprentice or person
10 violating any other rule or regulation promulgated by the
11 board; or
- 12 15.3.10 The applicant, licensee, registrant, apprentice or person
13 using any narcotic drug, psychoactive drug or alcohol which
14 impairs his or her ability to perform the work as an ophthalmic
15 dispenser.
- 16 15.4 Hearing and Sanctions. After due notice and hearing, a person
17 licensed or registered as an optician or apprentice or an applicant or

² All advertising must conform to the provisions of Ark. Code. Ann. §§17-89-405 & 406. The following examples are provided to assist in determining whether an advertisement is considered to be fraudulent, misleading or deceptive:

1. Advertisements which include prices of prescription glasses may be considered fraudulent, misleading or deceptive if they do not meet the following standards:
 - (a) A statement of whether or not the quoted cost includes an examination by a licensed optometrist or physician skilled in the diseases of the eye.
 - (b) If the advertised price is for a limited period of time, the advertisement shall state the expiration date of the offer.
 - (c) Any limits on a customer's rights to purchase the advertised product shall be stated in the advertisement.
 - (d) If a reduced price is offered on a specific item or items, the regular retail price of the specific item or items must be included in the advertisement.
 - (e) Knowingly and repeatedly advertising a manufacturer's discontinued item, whether or not prices are given, must so state the item has been discontinued.
2. Any licensee or registrant who fails to satisfy the requirements of this section shall be deemed to have committed fraudulent, misleading, or deceptive advertising.

1 person holding or seeking to hold an office permit, found to have
2 violated any provision of Ark. Code Anno. § 17-89-101 et seq. also
3 know as the Ophthalmic Dispensing Act and/or the Rules
4 promulgated by the Board of Dispensing Opticians may have any
5 one or more of the following sanctions imposed upon him by the
6 board:

7 15.4.1 Suspension, revocation or denial of the license, registration,
8 apprenticeship or office permit or the renewal thereof;

9 15.4.2 A penalty not to exceed one thousand dollars (\$1,000.00) for
10 each violation;

11 15.4.3 Conditions or restrictions placed upon the person's license,
12 registration, apprenticeship or practice; or

13 15.4.4 Such other requirements or penalties as may be appropriate to
14 the circumstances or the case, and which would achieve the
15 desired disciplinary purposes, but which would not impair the
16 public welfare and morals.

17 15.5 Failure to Pay Penalty. Unless the penalty assessed under this
18 section is paid within fifteen (15) days following the date for an
19 appeal from the order, the board shall have the power to file suit in
20 the Circuit Court of Pulaski County to obtain the judgment for the
21 amount of penalty not paid.

1 15.6 DUTY OF A SANCTIONED PROFESSIONAL. In every case in
2 which a professional shall, within thirty (30) days of the revocation,
3 suspension, or surrender, do the following;

4 15.6.1 Return his or her license and any license badge to the Board's
5 office;

6 15.6.2 Notify all of his or her clients in writing that his or her license
7 has been revoked, suspended, or surrendered;

8 15.6.3 Notify all clients to make arrangements for other professional
9 services, calling attention to any urgency in seeking the
10 substitution of another licensed professional;

11 15.6.4 Deliver to all clients any papers or property to which they are
12 entitled, or notify the client of a suitable time and place where
13 the papers or other property may be obtained, calling attention
14 to any urgency for obtaining the papers or other property;

15 15.6.5 Refund any part of the fees paid in advance that have not
16 been earned;

17 15.6.6 Keep and maintain a record of the steps taken to accomplish
18 the foregoing;

19 15.6.7 File with the Board a list of all other state, federal, and
20 administrative jurisdictions by which he or she is licensed.
21 Upon such filing, the Board will notify those entitled of the
22 revocation, suspension, or surrender; and

1 15.6.8 The professional shall, within thirty (30) days of revocation,
2 suspension, or surrender of the license, file an affidavit with
3 the Board that he or she has fully complied with the provisions
4 of the order and completely performed the foregoing or
5 provided a full explanation of the reasons for performing the
6 foregoing or provide a full explanation of the reasons for his or
7 her non-compliance. Such affidavit shall also set forth the
8 address where communications may thereafter be directed to
9 the respondent.

10 15.7 EMERGENCY ACTION. If the board finds that the public health,
11 safety, or welfare imperatively requires emergency action and
12 incorporates that finding in its order, the board can summarily
13 suspend, limit, or restrict a license. The notice requirement in
14 Section 7.7 of these rules does not apply and must not be construed
15 to prevent a hearing at the earliest time practicable.

16 15.7.1 Emergency Order: An emergency adjudicative order must
17 contact findings that the public health, safety, and welfare
18 imperatively required emergency action to be taken by the
19 board. The written order must include notification of the date
20 on which the board proceedings are scheduled for completion.

21 15.7.2 Written Notice. The written emergency adjudicative order will
22 be immediately delivered to persons who are required to

1 comply with the order. One or more of the following
2 procedures will be used:

3 15.7.2.1 Personal Delivery

4 15.7.2.2 Certified mail, return receipt requested, to the last
5 address on file with the board

6 15.7.2.3 First class mail to the last address on file with the Board;

7 15.7.2.4 Fax. Fax may be used as the sole method of delivery if
8 the person required to comply with the order has filed a
9 written request that Board orders be sent by fax and has
10 provided a fax number for that purpose.

11 15.7.2.5 Oral Notice. Unless the written emergency order is
12 served by personal delivery on the same day that the
13 order issues, the Board shall make reasonably immediate
14 efforts to contact by telephone the persons who are
15 required to comply with the order.

16 15.7.3 Unless otherwise provided by law, within ten (10) days after
17 emergency action taken pursuant to Section 16.1 of these
18 rules, the board must initiate a formal suspension or
19 revocation proceeding.

1 15.8 REINSTATEMENT AFTER SUSPENSION. An order suspending a
2 license may provide that a person desiring reinstatement may file
3 with the Secretary-Treasurer a verified petition requesting
4 reinstatement.

5 15.8.1 The petition for reinstatement must set out the following:

6 15.8.1.1 That the individual has fully and promptly complied with
7 the requirements of Section 15.6 of these rules pertaining
8 to the duty of a sanctioned professional;

9 15.8.1.2 That the individual has refrained from practicing in this
10 profession during the period of suspension;

11 15.8.1.3 That the individual's license fee is current or has been
12 tendered to the Board; and

13 15.8.1.4 That the individual has fully complied with any
14 requirements imposed as conditions for reinstatement.

15 15.8.2 Any knowing misstatement of fact may constitute grounds for
16 denial or revocation of reinstatement.

17 15.8.3 Failure to comply with the provisions of Sections 15.6.7 and
18 15.6.8 of these Rules precludes consideration for
19 reinstatement.

20 15.8.4 No individual will be reinstated unless the Board approves
21 reinstatement by majority vote.

22 **15.9** RE-LICENSURE FOR REVOKED OR SURRENDERED LICENSE.

23 No individual who has had his or her license revoked or who has

1 surrendered his or her license will be licensed, except on petition
2 made to the Board. The application for re-licensure is not allowed
3 until at least **two (2) years** after the revocation or surrender of
4 license took effect.

5 15.9.1 The applicant bears the burden of proof that he is rehabilitated
6 following the revocation or surrender of his license, that he can
7 engage in the conduct authorized by the license without undue
8 risk to the public health, safety, and welfare, and that he is
9 otherwise qualified for the license pursuant to Ark. Code Ann.
10 §§ 17-89-101 et seq..

11 15.9.2 The Board may impose any appropriate conditions or
12 limitations on a license to protect the public health, safety, and
13 welfare.

14 15.9.3 The Board may require that the person seeking re-licensure
15 take the licensing examination.

16 **16 DISCLOSURE**

17 16.1 Requirements to Provide Information to the Board. Every person
18 licensed or registered under the provisions Ark. Code. Ann §17-89-
19 101 et seq., shall upon request make available to the Arkansas
20 Board of Dispensing Opticians or its duly authorized representative
21 any information which the Board requires to verify compliance of the
22 Licensee or Registrant with all provisions of Ark. Code. Ann. § 17-
23 89-101 et seq., and these Board rules and regulations.

1 **17 OPTHALMIC STANDARDS**

2 17.1 Board to Provide Ophthalmic Standards. The Board shall provide a
3 copy of the American National Standards Institute Z-80.1
4 Ophthalmic Materials Standards to each person who is licensed or
5 registered as a dispensing optician in the State of Arkansas.

6 **18 PROHIBITED PRACTICE**

7 18.1 It shall be unlawful for any dispensing optician or person engaged in
8 the business of manufacturing, selling, or dispensing regular and/or
9 safety ophthalmic materials to fill or duplicate an ophthalmic
10 prescription without having a written prescription signed by the
11 licensed optometrist or licensed physician skilled in disease of the
12 eye who conducted the examination from which the prescription was
13 prepared; or fail to comply with the written instructions when such
14 instructions are included on a written prescription signed by a
15 licensed optometrist or licensed physician skilled in disease of the
16 eye. No change or alteration from the prescription of the prescribing
17 optometrist or physician shall be made, except that changes may be
18 made in tint or material of the lenses unless such changes are
19 specifically prohibited on the written prescription.

20 18.2 Nothing in these rules and regulations shall be construed to authorize
21 or permit any licensed or registered dispensing optician or any other
22 person, except a licensed optometrist or licensed physician skilled in
23 disease of the eye, to undertake or hold himself out as being able

(1) to examine eyes by any objective or subjective method or exercises eyes; (2) to undertake by any method or means the measurement of the cornea of the human eye; or (3) to examine, prescribe, diagnose, treat, or correct for visual deficiency. The prescribing, adapting, fitting, duplicating, dispensing, modifying, selling, or supplying of contact lenses for or to the human eye is specifically prohibited except when done by a licensed optometrist or licensed physician skilled in disease of the eye.

19 RECIPROCITY

19.1 Reciprocity. The Board will only consider a grant of reciprocity to an individual from a state which grants reciprocity to Arkansas licensees. The Board shall require that any person requesting reciprocity of the State of Arkansas shall meet the requirements as set forth in Ark. Code. Ann. §17-89-305 and §17-89-306 and provide written proof from the appropriate board or agency of reciprocity to Arkansas licensees from the state they are currently licensed.

20 SEVERABILITY

20.1 Severability. These rules being for the regulation of the business of ophthalmic dispensing and the protection of the public, the provisions hereby are declared to be severable and the invalidity of any rule, clause, sentence, paragraph or section hereof shall not affect the validity of the remainder thereof.

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY State Board of Opticians #0279
DIVISION _____
DIVISION DIRECTOR Marlin Freeman
CONTACT PERSON Jerry Himes
ADDRESS P.O. Box 627, Helena, Arkansas 72342
PHONE NO. 870-572-2847 FAX NO. 870-572-2206 E-MAIL jhimes@aosola.com
Cell 601-954-1278

INSTRUCTIONS

- A. Please make copies of this form for future use.
B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

1. What is the short title of this rule?
Rules and Regulations of the Arkansas State Board of Dispensing Opticians
2. What is the subject of the proposed rule?
Addition of complaint process and changes to the application process of Apprentice Dispensing Optician and creation of Student Optician
3. Is this rule required to comply with federal statute or regulations? Yes _____ No **XX** _____
If yes, please provide the federal regulation and/or statute citation.
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes _____ No **XX** _____
If yes, what is the effective date of the emergency rule? _____
When does the emergency rule expire? _____
Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No **XX** _____

5. Is this a new rule? Yes XX No _____ If yes, please provide a brief summary explaining the regulation. **Creation of a Student Optician**

Does this repeal an existing rule? Yes _____ No XX If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes XX No _____ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give Arkansas Code citation.
17-89-203

7. What is the purpose of this proposed rule? Why is it necessary?
To include regulations of administration procedure act in rules and regulations
To clarify the complaints and disciplinary process
To amend time keeping requirements apprentice submission
It is necessary for board and opticians to have clarification of processes

8. Will a public hearing be held on this proposed rule? Yes XX No _____

If yes, please complete the following:

Date: March 24, 2005

Time: 5 p.m.

Place: Arkansas State Capitol, room 151

9. When does the public comment period expire for permanent promulgation? (Must provide a date.)
March 10, 2005

10. What is the proposed effective date of this proposed rule? (Must provide a date.)
March 25, 2005

11. Do you expect this rule to be controversial? Yes _____ No XX If yes, please explain.

12. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas State Board of Dispensing Opticians #0279

DIVISION _____

PERSON COMPLETING THIS STATEMENT JERRY HIMES

TELEPHONE NO. 870-572-2847 FAX NO. 870-572-2206 EMAIL: jhimes@aosola.com
Cell: 601-954-1278

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE: Rules and Regulations of Arkansas State Board of Dispensing Opticians

1. Does this proposed, amended, or repealed rule or regulation have a financial impact?
Yes _____ No XX
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.
3. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total 00 _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total 00 _____

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule, and explain how they are affected.

Current Fiscal Year

\$ 00 _____

Next Fiscal Year

\$ 00 _____

5. What is the total estimated cost by fiscal year to the agency to implement this rule?

Current Fiscal Year

\$ 00 _____

Next Fiscal Year

\$ 00 _____